



MAINE

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MLA remains concerned with the assumptions in the underlying analysis of pending modifications to the right whale regulations that result in underweighting entanglement risk of Canadian fisheries while imposing new restrictions on the Maine lobster fishery unsupported by the evidence. MLA urges NMFS to fully account for observed trends in right whale deaths and to provide the Biden Administration with the best available science in support of comparable protections from Canada.

MLA requests three changes to NMFS's preferred alternative outlined in the FEIS in order to minimize the economic and operational impacts of the rule while maintaining necessary risk reductions.

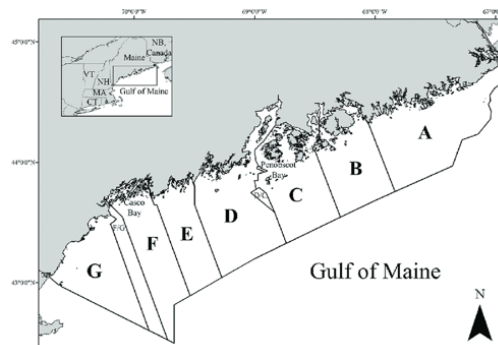
- Align the LMA1 seasonal restricted area with right whale sightings rather than zone lines.
- Adopt the gear marking system analyzed in the proposed rule.
- Clarify that future conservation equivalencies do not require public notice and comment.

1. The final rule should align the boundaries and timing of the LMA1 seasonal restricted area with right whale sightings or hot spots to avoid unnecessary adverse economic impacts.

MLA is strongly opposed to the LMA 1 Seasonal Restricted Area. Because this de facto LMA1 closure was not presented for public review during the Take Reduction Team or scoping process for the DEIS, it has not been tailored to minimize economic impacts and maximize protection of whales. MLA supports Alternative 1-B in the Proposed Rule which would go into effect only if the rule's other protective measures are not sufficiently effective at reducing risk of entanglement. Alternative 1-B can be accommodated while also achieving the 60% risk reduction target because the FEIS preferred alternative achieves 68.8% to 72.7% risk reduction across the entire lobster fishery, with the LMA1 restricted area contributing 6% to 7%¹.

Contrary to the assumptions of the Proposed Rule, many fishermen are unlikely to relocate gear to other, equally productive fishing grounds during the seasonal closure. The Maine Lobster Fishery is highly territorial and lobstermen fiercely protect productive fishing bottom.

According to the analysis of hotspots used as the basis of this seasonal restricted area which spans Zones C, D and E, there are no hotspots in approximately half of the restricted area in December or January (Zone E and the western portion of Zone D). MLA requests NMFS remove these areas from the



¹ Lower bound 68.8% (65.9% to 70.2%) and Upper bound 72.7% (66.5% to 75.8%)

seasonal restricted area in the final rule. The MLA strongly urges NMFS to align the boundaries of the LMA1 restricted area to include only the hotspots rather than aligning the boundaries with Maine's zone lines. Tailoring the seasonal restricted area to the hotspots will significantly reduce the size of the area in two of the four months and therefore adversely impact fewer fishermen and reduce the disruption to the entire Maine lobster fishery.

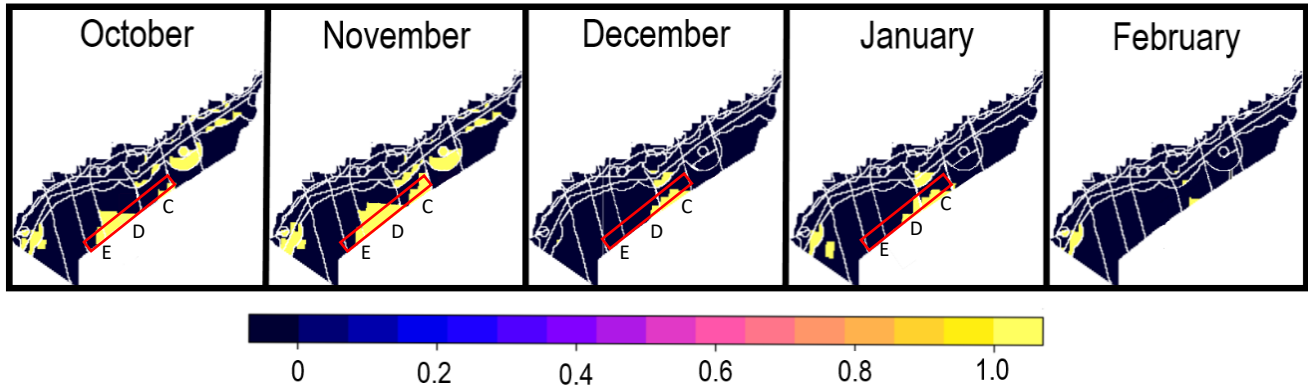


Figure 3.2: A hotspot analysis of the first 50 percent of risk characterized in the right whale density model version eight for LMA 1 (Source: FEIS). Red outline added to show length of Zones C, D and E to reference LMA1 SRA.

2. The gear marking system in the final EIS imposes new and significant costs. MLA supports the gear marking system in the proposed rule.

The gear marking system for Maine in the final EIS preferred alternative was not discussed during scoping or included in the Proposed Rule or DEIS. The state of Maine worked with NMFS to proactively implement a new gear marking scheme in 2020 for Maine to satisfy the requirements of the Final Rule. Maine's new gear marking system incorporates a removable green mark to uniquely identify gear fished in exempt versus non-exempt waters, while allowing gear to be shifted back and forth between these areas. The FEIS preferred alternative is a significant change from the proposed rule and would require many lobstermen who fish in both state and federal waters to maintain separate sets of uniquely marked vertical lines for gear fished in each area. The cost of additional marking required in federal waters has not been analyzed and would add substantial cost and time. Not only will fishermen need to purchase additional rope, but it will take considerable time to convert the gear. This will increase labor costs and opportunity cost of lost fishing days. For these reasons, MLA requests that NMFS finalize the gear marking system in the proposed rule.

3. Clarify that conservation equivalencies do not need to be approved through public notice and comment.

MLA appreciates that the final EIS preferred alternative includes many conservation equivalencies that are critical to the successful implementation of the whale rules in the Maine lobster fishery. However, the process for approving future equivalencies is not clear. MLA is committed to finding cost-effective approaches that reduce risk to right whales. A process that involves public notice and comment will unnecessarily consume Federal, state, and fishermen's time and resources. Establishing a streamlined process for conservation equivalencies is critical to building the necessary support among affected fishermen. MLA requests that NMFS' establish a review process for conservation equivalencies that does not require public notice and comment.